

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FELIX SANCHEZ,

Plaintiff,

-against-

SUPERINTENDANT LEONARD A.  
PORTUONDO ET AL.,

Defendants.

JED S. RAKOFF, U.S.D.J.

On January 4, 2020, this Court issued an order denying Felix Sanchez's Rule 60(b) motion for relief from a January 12, 2000 order denying him habeas relief. See ECF No. 19. Sanchez now seeks a Certificate of Appealability ("COA") for this January 4 order. See ECF No. 20.

In Kellogg v. Strack, 269 F.3d 100 (2d Cir. 2001), the Second Circuit held that a COA is required to appeal a district court's denial of a Rule 60(b) motion for relief from judgment when, as here, the underlying order denied 28 U.S.C. § 2254 habeas relief. Such a COA, however, should issue "only if" the petitioner shows that "(1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to

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ORDER

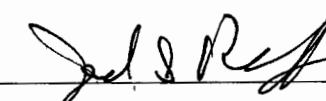
support the 60(b) motion, states a valid claim of the denial of a constitutional right." Id. at 104.

Sanchez has not met that burden here. Kellogg itself, which held that reasoned jurists could not debate that a motion "made twenty-six months after the entry of the final judgment" was untimely, id., demonstrates as much. As explained in the January 4 order, Sanchez's motion comes nearly twenty years after the entry of the judgment he seeks to reopen, and no mitigating circumstances justify this delay. Accordingly, Sanchez has not shown that the Court's denial of his Rule 60(b) motion was debatable, an essential requirement for obtaining a COA in this case. See id. (declining to issue a COA solely on this ground); see also Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (case on which the Kellogg approach was based finding that "both" the district court's procedural and constitutional rulings must be debatable for a COA to issue). The motion for a COA is thus denied.

SO ORDERED.

Dated: New York, NY

February 11, 2020

  
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JED S. RAKOFF, U.S.D.J.